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Utah Court of Appeals

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Lora C. Siegler; Attorney for Appellants.
Joseph R. Fox Attorney for Respondents.

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UTAH COURT OF APPEALS
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DOCKET NO. 890735-CA IN THE UTAH COURT OF APPEALS

ASSOCIATED ELECTRIC SUPPLY, INC.,
a Utah corporation,

Plaintiff and Appellant,

vs. No. 890735-CA

SHIRL B. INKLEY, an individual,
dba INKLEY CONSTRUCTION, THE
CORPORATION OF THE PRESIDING
BISHOP OF THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS, and UNITED PACIFIC
INSURANCE COMPANY,

Defendants and Respondents.

BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third
District Court for Salt Lake County
Honorable J. Dennis Frederick, Judge

Joseph R. Fox
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Argument priority classification number 14(b).

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code, Section 78-2a-3(2)(j).

STATEMENT OF NATURE OF PROCEEDINGS

The plaintiff appeals the dismissal of its action upon the defendants' motion for a directed verdict under Tule 50, Utah Rules of Civil proceedure, and for denial of the plaintiff's motion for a new trial or to reopen the evidence by the trial court.

STATEMENT OF ISSUES

Without admitting the contentions of the plaintiff, the defendants incorporate the plaintiff's Statement of the Issues as though fully set forth herein.

DETERMINATIVE STATUTES AND RULES

Utah Code Annotated, Title 38, Chapter 1;
Addendum _____.
Utah Code Annotated, Title 14, Chapter 2;
Addendum _____.
Utah Code Annotated, Title 58-50-10;
Addendum _____.
Rule 8(b), U.R.C.P.; Addendum _____.
Rule 9(c), U.R.C.P., Addendum _____.
Rule 4-504, Utah Rules of Judicial Administration;
Appellants Brief, p. 7 of Addendum.

STATEMENT OF CASE

Nature of the Case:

The defendants incorporate the plaintiff's Statement of the Nature of the Case as though fully set forth herein.

Course of the Proceedings:

The defendants incorporate the plaintiff's Statement of the Course of the Proceedings as though fully set forth herein. The defendants add one additional fact to the plaintiff's statement: That the defendants had moved, at the conclusion of the plaintiff's evidence, for dismissal of all three causes of action of the plaintiff.

Description of the Disposition at the Trial:

In granting the defendant's motion for a directed verdict, the trial court found that the plaintiff had established only two facts: That certain items involved in electrical constracting were sold to the sub-contractor, Old Trapper, and that the items were of the type and approximate quantity necessary for use in the construction of the Hunter Stake Center.

The trial court concluded that these two facts alone were insufficient to survive a Rule 50 motion on all three claims of the plaintiff.

Statement of the Relevant Facts:

1. The defendants incorporate the plaintiff's statement of facts at paragraphs a. and b. as though fully set forth herein.

2. The defendants filed their Answer specifically denying the factual allegations of the Complaint and setting forth certain affirmative defenses. (Record at 27-29)

3. Contrary to the plaintiff's assertions, when the trial court denied the plaintiff's Motion for Summary Judgment, it did not order defendants' counsel to prepare the order.

The only notation in the record is that "the Court denies the motion." (Record at 170, 171)

4. Plaintiff's version of the summary-judgment order first appeared in its counsel's affidavit in support of her motion for a new trial. It is unsupported by the record. (Record at 171 and 272. Reporter's Transcript 307, p. 2, 3.)

5. The record does not support the plaintiff's contention of fact as stated in paragraph k; nor is any reference to the record made by the plaintiff in support of the allegation of fact. (Appellant's Brief, p. 11.)

6. On the day of trial, for the first time, immediately prior to the presentation of its evidence, the plaintiff inquired of the Court as to its ruling on the motion for summary judgment held nearly a year before. (Reporter's Transcript 307, p. 2,3.)

7. The trial court after reviewing the file ordered the plaintiff to put on its case in full. (Reporter's Transcript 307, p. 2,3.)

8. After the trial court ordered the plaintiff's counsel to put on her case in full, she immediately commenced the presentation of her evidence by calling Mr. Hess, the first of only two witnesses. She did not complain of surprise or confusion at the court's order. (Reporter's Transcript 307, p. 2,3.)

9. At trial the plaintiff's ledger cards were introduced into evidence. They were the only records of the

plaintiff's accounting for the purchases and payments on the Old Trapper accounts put into evidence. (Reporter's Transcript 306, p. 20, 21. Exhibit 81, 1-18 pages.)

10. The ledger cards recorded all the purchases and payments to the Old Trapper account. (Reporter's Transcript 306, p. 20, 21.)

11. The ledger cards evidenced that the plaintiff sold materials to Old Trapper which were intended for use on several different projects. At the same time, the plaintiff received payments from Old Trapper to be applied to the several projects, which payments were only applied to the oldest balance on the account without regard to any project. (Reporter's Transcript 306, pp. 23-28. Exhibit 81.)

12. After August 1, 1985, accounting for the purchases and payments on the Old Trapper account was consolidated into one general ledger account. (Reporter's Transcript 306, p. 29-30.)

13. After August 1, 1985, the plaintif applied the payments made by Old Trapper to its general ledger account without regard to the project to which the purchases were made. (Reporter's Transcript 306, p. 29,30.)

14. At the conclusion of the plaintiff's case, the defendants' counsel moved for a directed verdice on all three causes of action of the plaintiff. (Reporter's Transcript 307, p. 28-31.)

15. The plaintiff's counsel does not contend that she was unprepared to put on her case in full when ordered to do so by the court. (Paragraph w., p. 14, Appellant's Brief.)

16. After the trial, the trial court entered Findings of Fact and Conclusions of Law. (Addendum _____.)

17. In opposition to the defense motion for a directed verdict, plaintiff's counsel requested that if the trial court was inclined to grant the motion that she be allowed to reopen her evidence to present her case in full. (Reporter's Transcript 307, p.31-33.)

SUMMARY OF ARGUMENT

This appeal is brought by the plaintiff as a result of the trial court's ruling in favor of the defendants on their motion for a directed verdict at the conclusion of the plaintiff's evidence.

The bases for the plaintiff's appeal are two fold, namely: That the plaintiff's counsel was surprised and confused by the trial court's directive that she put on her case in full, and that she could not rely on her assertions that the trial court had previously granted in part her motion for summary judgment.

That the trial court erred in its findings that the plaintiff was required to introduce evidence regarding the perfection of the plaintiff's lien and bond claims. And that the trial court erred in finding that the plaintiff was required to put on evidence that it had satisfied the requirements of U.C.A. 58-50-10.

SUMMARY OF ARGUMENT CONT'D

The trial court acted within its discretion in denying the plaintiff's motion for a new trial and to reopen the evidence.

The trial court's findings of fact with respect to the plaintiff's failure to introduce evidence on its claim under Title 58, Title 14, and under Title 58 are supported by the evidence.

And, since the plaintiff did not introduce any evidence on its claim for unjust enrichment, the trial court properly dismissed the claim upon the defenses motion.

ARGUMENT

The bases for this appeal are actually only twofold: 1) That plaintiff's case was prejudiced by the lack of an order denying its motion for summary judgment, and 2) that the plaintiff should have not been required to put on evidence of its compliance with the provisions of Title 14, Title 38, and Title 58.

Although the plaintiff also complains that its claim for unjust enrichment should not have been dismissed. The appeal on this basis is entirely unjustifiable. The plaintiff presented no evidence on this claim and gives no reason for its failure to do so. This fact was brought to the attention of the trial court in the defendants' motion for a directed verdict. But with or without the defendant's motion, the trial court was correct in dismissing the claim which was unsupported by the evidence. Therefore, the appeal of this claim is entirely without support.

Considering the plaintiff's first basis for its appeal: That its case was prejudiced by the lack of an order denying its motion for summary judgment, an examination of the facts and law

will show that this basis is untenable.

The plaintiff argues that despite the motion's denial, the trial court made certain findings with respect to the validity of the plaintiff's lien and bond claims so that the only issue for trial was to have been which of the invoiced items were actually used in the project and which had been paid for. Also, the plaintiff contends that counsel for the defendants was ordered to prepare an order reflecting the court's ruling. The record is completely devoid of any facts supporting the plaintiff's contentions.

The record of the court's minute entry made after the hearing on the plaintiff's motion only shows that the motion was denied. The record does not indicate that the court ordered either counsel to prepare an order, and the minute entry does not contain any of the findings as advanced by the plaintiff. Therefore, there is no support in the record for the plaintiff's position.

Under the rules of the Third District Court and its successor, Rule 4-504, Utah Rules of Judicial Administration, the party obtaining an order is the one to prepare the order. See Addendum ___.

Therefore, under the rules, had the plaintiff obtained an order from the court as claimed, the plaintiff was the one who should have prepared the order. Especially where the plaintiff intended to rely on the purported order in determining the manner of its presentation of evidence at trial.

The court order was made well over a year prior to the trial of the plaintiff's case. During that period of time, the plaintiff never proposed an order on the court's ruling. Nor did the plaintiff ever complain that an order was not prepared by def-

endants' counsel. The plaintiff simply let the matter lie dormant up until the day of trial.

On the day of trial, immediately prior to the commencement of its case, the plaintiff's counsel, for the first time, requested a clarification of the prior ruling. The Court,after reviewing the file, informed plaintiff's counsel that the file only indicated that the motion had been denied. Then, the Court directed that the plaintiff was to put on its case, meaning its case in full.

Contrary to the Court's direction, plaintiff's counsel elected to present evidence as though the trial court had made the findings as she now claims. All the while having in her possession at trial the ability to prove her client's case in full. Then, after the defendants' motion for a directed verdict, she requested that if the Court was inclined to grant the defendants' motion, that she be allowed to open up her case and present her case in full. All this after the Court had instructed her prior to the commencement of the trial to put on her case in full.

Under these facts, the plaintiff's counsel argues that she was surprised and confused. And that under Rule 59, Utah Rules of Civil Procedure, she is entitled to a new trial or to reopen her case to present the additional evidence.

Under Rule 59(a)(3), Addendum ____, in order for surprise to be a ground for a new trial, it must rise to that level of surprise that could not have been guarded against by ordinary prudence.

First of all, the plaintiff's counsel did not inform the trial court of her surprise when the court ordered her to proceed with her case in full. Instead she went ahead and presented her case

contrary to the court's direction. This isn't surprise this is obstinacy. Furthermore, the plaintiff cannot rationally claim that its counsel was surprised when, in fact, she was prepared to put on the case in full, but she simply didn't do it of her own choice.

Similarly, plaintiff's counsel is hard pressed to logically argue that she was confused. She wasn't so confused that she didn't adequately prepare for the trial. She couldn't have been confused by the trial court's prior ruling on the motion for summary judgement. The motion was simply denied. If the plaintiff's counsel was confused, the confusion resulted from impressions she had of the court's ruling which were unsupported by the record. And she was well aware of these facts prior to trial, and she could have guarded against such confusion by either preparing an order and presenting it to the court, or by making a motion seeking a clarification of the court's ruling. She took none of these precautions, and, therefore, she may not now claim that the lack of an order prejudiced her ability to present her case in full.

The trial court is granted broad discretion in allowing or denying motions for new trial or to reopen the evidence. Its decision is this regard will not be overturned by the appellate court unless there is an abuse of that discretion. Pozzolan Portland Cement Co. v. Gardner, 688 P2nd 569 (Ut. 83).

The general rule concerning abuse of discretion is that the Court will presume that the discretion of the trial court was properly exercised unless the record clearly shows otherwise. Donohue v. I.H.C., 748 P2d 1067 (Utah)

The trial court has no discretion to grant a new trial absent a showing of at least one of the circumstances specified in Rule 59. Moon Lake Electric v. Ultrasystems Western Const., 767 P2d 125 (Ut. 88)

Although the plaintiff cites numerous cases in support of its contention that the trial court abused its discretion in denying the motions, they are not persuasive authority. None of the fact patterns of the cases cited parallel that of the plaintiff's case: That the plaintiff was fully prepared at trial; that plaintiff was directed to put on its case in full by the court; that having been so directed, the plaintiff did not complain of surprise or confusion; and that the plaintiff did not put on its case in full only because the plaintiff's counsel elected not to do so.

The plaintiff argues, further, that justice and fairness demand a new trial. But such principles find expression in Rule 59. They only require that the plaintiff have the opportunity for a fair trial. The plaintiff has cited not authority, and indeed there is none, for the proposition that if given a second chance it would fair better and the potential for a more favorable outcome is sufficient ground for a new trial.

The plaintiff has failed to show by the record that the trial court abused its discretion. Therefore, the decision of the trial court in denying the plaintiff's motions for a new trial or to reopen the evidence must be allowed to stand.

The second ground for the appeal is that the trial court erred in requiring the plaintiff to put on evidence of its compliance with the provisions of Titles 14, 38, and 58, Utah Code Annotated.

With respect to Titles 14 and 38, the plaintiff proposes that the defendants' Answer insufficiently raised as factual issues the plaintiff's non-compliance with these statutes. However, an examination of the rules and the pleadings shows otherwise.

Under Rules 8 and 9, U.R.C.P., addendum _____ and _____, issues of fact are raised when the defendants' answer fairly meets the allegations of the complaint so as to inform the plaintiff of the defenses.

Contrary to plaintiff's assertion that it alleged generally its compliance with the rules, the Complaint makes specific factual allegations. See Appellant's Brief, p. 9.

In so far as those factual allegations were specifically denied, factual issues were preserved for trial.

Paragraphs 7 through 10 of the Complaint make specific allegations of fact with respect to the plaintiff's lien and bond claim. Those factual allegations were specifically denied by the answer.

Paragraph 12, of the Complaint, alleges that demand for payment was made upon the defendants. However, contrary to the argument of the plaintiff, that allegation does not allege that notice was given as required by Titles 14 and 38, nor that

the demand was made in compliance with said titles. The defendants admitted that a demand was placed upon them by the plaintiff, but as is shown throughout the Answer, the defendants denied that the plaintiff had complied with the provisions of the statutes.

Furthermore, the Answer denies the factual allegations of the plaintiff that its notice of lien was duly recorded as alleged in paragraphs 10, 15 and 16 of the Complaint.

Whether or not the plaintiff gave notice is material to the plaintiff's claims in two respects: Failure to give notice would preclude an award of attorney's fees under U.C.A. 38-1-7(3); and failure to give notice would preclude an action on the bond under U.C.A. 14-2-4(a). Addendums ____ and _____.

With respect to the bond claim, the Complaint contains no allegations, general or otherwise, of the plaintiff's compliance with the provisions of Title 14, as stated herein.

Under the pleadings, the plaintiff was required to introduce evidence of its compliance with the statutes. It did not introduce any such evidence. In the absence of any such evidence, the trial court ruled properly in dismissing the plaintiff's claims.

With respect to the plaintiff's appeal that it should not have had to introduce evidence of its compliance with Section 58-50-10, Utah Code Annotated, the plaintiff argues that the section constitutes an affirmative defense to be proved by the defendants.

However viewed by the Court, whether as an affirmative defense or a pre-condition to recovery on the lien and bond claims,

the evidence adduced by the defendants from the cross-examination of the plaintiff's witness, Mr. Hess, clearly put the burden on the plaintiff to introduce some evidence of compliance.

U.C.A. 58-50-10, see addendum _____, has been held to be a defense to both a lien and bond claim. Western ready Mix Concrete Company v. Richard Rodriguez et al., 567 P2d 1118 (Ut. 77)

Mr. Hess testified that the plaintiff did not account separately for the payments made by Old Trapper after August 1985, the period for which the plaintiff's claim was made.

Once the proponent of a proposition has produced evidence which proves or tends to prove the proposition asserted, the burden of producing evidence disproving or tending to disprove the proposition shifts to the opponent, and he must introduce such evidence as may be necessary to avoid the risk of a directed verdict or a peremptory finding against him as to the existence of the proposition. Koesling v. Basamakis, 539 P2d 1043.

The burden was clearly on the plaintiff to introduce some evidence to refute the testimony of Mr. Hess. It did not. And the trial court was correct in its finding that the plaintiff had failed to comply with the statute.

Finally, the plaintiff argues that the trial court erred in its finding on waiver and estoppel. But the court made no such finding, so the argument is moot.

CONCLUSION

Therefore, for the reasons stated, the defendants request that the Court deny the plaintiff's appeal and that the defendants be allowed their costs and reasonable attorney's fees as required by law.

Dated: March 21, 1990.

Joseph R. Fox
Attorney for Defendants

nal to the party conducting the deposition, and shall deliver copies to the other parties requesting the same. The reporter shall then file a certificate with the clerk of the court certifying to whom the original and copies were delivered and the dates they were delivered. Any party moving for the publication of a deposition shall provide the court with the original or copy in the party's possession at the time the motion to publish is made.

(5) All parties shall be entitled to conduct discovery proceedings in accordance with this rule. All discovery proceedings shall be completed, including all responses thereto, and all depositions and other documents filed with the court no later than thirty (30) days before the date set for trial of the case. The right to conduct discovery proceedings within thirty (30) days before trial shall be within the discretion of the court. Motions to conduct discovery within thirty (30) days before trial shall be presented to the judge assigned to the case upon notice to the other parties in the action. In exercising its discretion, the court shall take into consideration the necessity and reasons for such discovery, the diligence or lack of diligence of the parties seeking such discovery, whether permitting such discovery will prevent the case from going to trial on the scheduled date, or result in prejudice to any party. Nothing herein shall preclude or limit the voluntary exchange of information or discovery by stipulation of the parties at any time prior to the date set for trial, but in no event shall such exchanges or stipulations require a court to grant a continuance of the trial date.

Rule 4-503. Requests for jury instructions.
Intent:
To establish a uniform procedure for submitting and requesting jury instructions.
Applicability:
This rule shall apply to the District and Circuit Courts.
Statement of the Rule:
(1) All jury instruction requests shall be presented to the court 10 days prior to the scheduled trial date unless otherwise ordered by the court. At the time of presentation to the court, a copy of the requested instructions shall be furnished to opposing counsel.
(2) Jury instruction requests must be in writing and state in full the instruction requested. Each request shall be upon a separate sheet of paper, the original and copies of which shall be free from red lines and firm names and shall be entitled:

"Instruction No. ____"

The number of the request shall be written in lead pencil.
(3) If case citations are used in support of a requested instruction, at least one copy of the requested instruction furnished to the court shall be submitted without the citations. Citations may be provided upon separate sheets attached to the particular instruction to which the citation applies.

Rule 4-504. Written orders, judgments and decrees.
Intent:
To establish a uniform procedure for submitting written orders, judgments, and decrees to the court.
Applicability:
This rule shall apply to all courts of record and not of record.
Statement of the Rule:
(1) In all rulings by a court, counsel for the party or parties obtaining the ruling shall within fifteen (15) days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.
(2) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five (5) days after service.
(3) Stipulated settlements and dismissals shall also be reduced to writing and presented to the court for signature within fifteen (15) days of the settlement and dismissal.
(4) Upon entry of judgment, notice of such judgment shall be served upon the opposing party and proof of such service shall be filed with the court. All judgments, orders, and decrees, or copies thereof, which are to be transmitted after signature by the judge, including other correspondence requiring a reply, must be accompanied by pre-addressed envelopes and pre-paid postage.
(5) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own initiative and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made.
(6) Except where otherwise ordered, all judgments and decrees shall contain the address or the last known address of the judgment debtor and the social security number of the judgment debtor if known.
(7) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.
(8) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.
(9) In all cases where judgment is rendered upon a written obligation to pay money and a judgment has previously been rendered upon the same written obligation, the plaintiff or plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon the same written obligation.

Rule 4-505. Attorneys' fees affidavits.
Intent:
To establish uniform criteria and a uniform format for affidavits in support of attorneys' fees.
Applicability:
This rule shall govern the award of attorneys' fees in the trial courts.
Statement of the Rule:
(1) Affidavits in support of an award of attorneys' fees must set forth specifically the legal basis for the award, the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment, or the time spent in pursuing the matter to the stage for which attorneys' fees are claimed, and affirm the reasonableness of the fees for comparable legal services. The affidavit must also separately state hours by persons other than attorneys, for time spent, work completed and hourly rate billed.
(2) If the fee arrangement with the client is other than at an hourly rate an affidavit of the client or

correspondence from the client shall be filed with the court setting forth the terms and conditions of the arrangement, whether a flat rate or contingent fee, or the percentage of funds recovered or dealt with.
(3) If judgment is being taken by default for a principal sum which it is expected will require considerable additional work to collect, the following phrase may be included in the statement after an award consistent with the time spent to the point of default judgment, to cover additional fees incurred in pursuit of collection:

"AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES EXPENDED IN COLLECTING SAID JUDGMENT BY EXECUTION OR OTHERWISE AS SHALL BE ESTABLISHED BY AFFIDAVIT."

(4) Judgments for attorney's fees should not be awarded except as they conform to the provisions of this rule.

Rule 4-506. Withdrawal of counsel in civil cases.
Intent:
To establish a uniform procedure and criteria for withdrawal of counsel in civil cases.
Applicability:
This rule shall apply to all trial courts of record and not of record.
Statement of the Rule:
(1) An attorney may withdraw as counsel of record in all cases except where withdrawal would result in a delay of trial. In that case, an attorney may not withdraw without the approval of the court.
(2) When an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney and upon all other parties not in default and a certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal served upon the client shall include a notification of the trial date.
(3) When an attorney dies or is removed or suspended or withdraws from the case or ceases to act as an attorney, opposing counsel must notify the unrepresented client of his her responsibility to retain another attorney or appear in person before opposing counsel can initiate further proceedings against the client.

Rule 4-507. Disposition of funds on trustee's sale.
Intent:
To establish a uniform procedure for filing trustee affidavits of deposit and claimant petitions for adjudication of priority in trustee's sales.
To establish a uniform procedure in determining the disposition of funds on trustee's sales.
Applicability:
This rule shall apply to all courts of record.
Statement of the Rule:
(1) At the time of depositing with the Clerk of the Court any proceeds from a trustee's sale in accordance with Utah Code Ann. Section 57-1-29, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses. The clerk shall notify the listed claimants within 10 days of receiving the affidavit of deposit.
(2) Any claimant may then file a petition for adjudication of priority to these funds and request a hearing before the court. The petitioner requesting the hearing shall give notice of the hearing to all claimants listed in the trustee's affidavit of deposit and any other known to the petitioner. All parties having or claiming an interest must appear at and assert their claim or be barred thereafter.
(3) Pursuant to the determination hearing the court will direct the [illegible] consistent with the trustee's sale deed and enter an order with the clerk of the court or county treasurer directing the disbursement of funds as determined.

ARTICLE 6.

CRIMINAL PRACTICE.

Rule 4-601. Victims and witnesses.
Intent:
To establish procedures which ensure that victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity.
To establish procedures which ensure that child victims and child witnesses of crime are treated with consideration for their age and maturity and in a manner that is the least traumatic, intrusive or intimidating.
Applicability:
This rule shall apply to the judiciary, prosecutors, defense counsel, and law enforcement and corrections personnel in all felony cases in and all misdemeanor cases where personal injury is sustained by the victim. This rule also applies to all individuals who have been subpoenaed or called to testify as witnesses in any criminal proceeding.
Statement of the Rule:
(1) At the time of the arraignment or preliminary hearing, or as soon thereafter as possible, the prosecuting agency shall provide written verification to the court that all victims and witnesses have been informed of their responsibilities during the criminal proceedings and that those proceedings have been explained to them in a manner which is understandable, given the age and maturity of the victims and witnesses.
(2) At the time of the arraignment or preliminary hearing, or as soon thereafter as possible, the prosecuting agency shall provide written verification to the court that all victims and witnesses have been informed of their right to be free from threats, intimidation and harm by anyone seeking to induce the victim or witness to testify falsely, withhold testimony or information, avoid legal process, secure the dismissal of or prevent the filing of a criminal complaint, indictment or information. At that time and where facilities are available, the prosecuting agency shall provide written verification to the court that the victims and witnesses have been informed of their right to a separate waiting area.
(3) Unless otherwise waived in writing, the prosecuting agency shall provide notice to all victims of the date and time of scheduled hearings, trial and sentencing and of their right to be present during those proceedings and any other public hearing unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.
(4) The informational rights of victims and witnesses contained in paragraphs (1) through (3) of this rule are contingent upon their providing the prosecuting agency and court with their current telephone numbers and addresses.
(5) The written verification filed with the magistrate shall be transferred with the case file to the

(4) by the written admission or waiver of service by the person to be served, duly acknowledged, or otherwise proved.

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) **Refusal of copy.** If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof.

(j) **Time of service to be endorsed on copy.** At the time of service, the person making such service shall endorse upon the copy of the summons left for the person being served, the date upon which the same was served, and shall sign his name thereto, and, if an officer, add his official title.

(k) **Designation of newspaper for publication of notice.** In any proceeding where summons or other notice is required to be published, the court shall, upon the request of the party applying for such publication, designate the newspaper and authorize and direct that such publication shall be made therein; provided, that the newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(l) **Service of process by telegraph or telephone.** A summons, writ, order or other process in any civil action or proceeding, and all other papers requiring service, may be transmitted by telegraph or telephone for service in any place within this state, and the telegraphic or telephonic copy of such process or paper so transmitted may be served or executed by the officer or other person to whom it is sent for that purpose, and returned by him, if return is required, in the same manner and with the same force and effect as the original thereof; and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities as if the copy were the original. The process or paper, when a writ or order, must be filed in the court from which it was issued, and a certified copy thereof must be preserved in the telegraph or telephone office from which it was sent. The operator sending the message may use either the original or a certified copy of the process or paper. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator in sending the same to telegraph or telephone a description of the seal, or any word or device thereon, but the same may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "Seal."

(m) **Service by constable.** All writs and process, including executions upon judgments, issued out of a district, city or justice court in a civil action or proceeding may be served by any constable of the county. (Amended, effective March 1, 1988.)

Rule 5. Service and filing of pleadings and other papers.

(a) **Service: When required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written notice other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, notice of signing or entry of judgment under Rule 58A(d), and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except as provided in Rule 55(a)(2) (default proceedings) or pleadings asserting new or additional claims for relief against them which shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service: How made.**

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(2) A resident attorney, on whom pleadings and other papers may be served, shall be associated as attorney of record with any foreign attorney practicing in any of the courts of this state.

(c) **Service: Numerous defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) **Filing.** All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but the court may upon motion of a party or on its own initiative order that depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding.

(e) **Filing with the court defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk, if any.

(Amended, effective Sept. 4, 1985 and Jan. 1, 1987.)

Rule 6. Time.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), 60(b) and 73(a) and (g), except to the extent and under the conditions stated in them.

(c) **Unaffected by expiration of term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) **For motions — Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) **Additional time after service by mail.** When over a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

PART III.

PLEADINGS, MOTIONS, AND ORDERS.

Rule 7. Pleadings allowed; form of motions.

(a) **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) **Motions, orders and other papers.**

(1) **Motions.** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) **Orders.** An order includes every direction of the court including a minute order made and entered in writing and not included in a judgment. An order for the payment of money may be enforced by execution in the same manner as if it were a judgment. Except as otherwise specifically provided by these rules, any order made without notice to the adverse party may be vacated or modified without notice by the judge who made it, or may be vacated or modified on notice.

(3) **Hearings on motions or orders to show cause.** When on the day fixed for the hearing of a motion or an order to show cause the judge before whom such motion or order is to be heard is unable to hear the parties, the matter shall stand continued until the further order of the court, or it may be transferred by the court or judge to some other judge of the court for such hearing.

(4) **Application of rules to motions, orders, and other papers.** The rules applicable to captions, signings, and other matters of form of pleadings apply to all motions, orders, and other papers provided for by these rules.

(c) **Demurrers, pleas, etc., abolished.** Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Rule 8. General rules of pleadings.

(a) **Claims for relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) **Defenses; form of denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) **Affirmative defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative de-

fense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

(d) **Effect of failure to deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) **Pleading to be concise and direct; consistency.**

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of pleadings.** All pleadings shall be so construed as to do substantial justice.

Rule 9. Pleading special matters.

(a) (1) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and on such issue the party relying on such capacity, authority, or legal existence, shall establish the same on the trial.

(2) **Designation of unknown defendant.** When a party does not know the name of an adverse party, he may state that fact in the pleadings, and thereupon such adverse party may be designated in any pleading or proceeding by any name; provided, that when the true name of such adverse party is ascertained, the pleading or proceeding must be amended accordingly.

(3) **Actions to quiet title; description of interest of unknown parties.** In an action to quiet title wherein any of the parties are designated in the caption as "unknown," the pleadings may describe such unknown persons as "all other persons unknown, claiming any right, title, estate or interest in, or lien upon the real property described in the pleading adverse to the complainant's ownership, or clouding his title thereto."

(b) **Fraud, mistake, condition of the mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) **Conditions precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

(d) **Official document or act.** In pleading an official document or act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

(f) **Time and place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) **Special damage.** When items of special damage are claimed, they shall be specifically stated.

(h) **Statute of limitations.** In pleading the statute of limitations it is not necessary to state the facts showing the defense but it may be alleged generally that the cause of action is barred by the provisions of the statute relied on, referring to or describing such statute specifically and definitely by section number, subsection designation, if any, or otherwise designating the provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the party pleading the statute must establish, on the trial, the facts showing that the cause of action is so barred.

(i) **Private statutes; ordinances.** In pleading a private statute of this state, or an ordinance of any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient to refer to such statute or ordinance by its title and the day of its passage or by its section number or other designation in any official publication of the statutes or ordinances. The court shall thereupon take judicial notice thereof.

(j) **Libel and slander.**

(1) **Pleading defamatory matter.** It is not necessary in an action for libel or slander to set forth any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which the action arose; but it is sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory matter must establish, on the trial, that it was so published or spoken.

(2) **Pleading defense.** In his answer to an action for libel or slander, the defendant may allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages, and, whether he proves the justification or not, he may give in evidence the mitigating circumstances.

Rule 10. Form of pleadings.

(a) **Caption; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. A party whose name is not known shall be designated by any name and the words "whose true name is unknown." In an action in rem unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of this action."

(b) **Paragraphs; separate statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption by reference; exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading, or in any motion. An exhibit to a pleading is a part thereof for all purposes.

(d) **Paper used for pleadings; size and style.** All pleadings and other papers filed in any action, except printed documents or other similar exhibits, shall be typewritten on good, white, unglazed paper of letter size (8½" x 11"), with a margin at the top of each page of not less than 2 inches and a left hand margin of not less than 1 inch. The impression must be on one side of the paper only and must be double spaced, except for matter customarily single spaced and indented. The number of the action shall be inserted on the first page of every pleading or other paper filed, and the matter appearing on all pleadings or other papers shall be clearly legible.

The clerk of the court shall examine all pleadings and other papers filed and may require counsel to substitute for any pleadings or other papers not conforming to the foregoing requirements, original pleadings or other papers prepared in conformity with this subdivision.

(e) **Replacing lost pleadings or papers.** If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

(Amended, effective Jan. 1, 1983.)

Rule 11. Signing of pleadings, motions, and other papers; sanctions.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name who is duly licensed to practice in the state of Utah. The attorney's address also shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(Amended, effective Sept. 4, 1985.)

Rule 12. Defenses and objections.

(a) **When presented.** A defendant shall serve his answer within 20 days after the service of the summons is complete unless otherwise expressly provided by statute or order of the court. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action;

(2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) **How presented.** Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject-matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties

dence, internal confidential publications, office memoranda, university press publications, and publications of the state historical society 1979

37-5-2. Commission to establish, operate and maintain

The commission shall establish, operate and maintain a publication collection, a bibliographic control system and depositories as provided in this act 1979

37-5-3 Deposit of copies of publications with commission

(1) Each state agency shall deposit with the commission copies of each state publication issued by it in such number as shall be specified by the state librarian

(2) Each political subdivision shall deposit with the commission two copies of each state publication issued by it

(3) The commission shall forward two copies of each state publication deposited with it by a state agency to the Library of Congress, one copy to the state archivist, at least one copy to each depository library, and retain two copies

(4) The commission shall forward one copy of each state publication deposited with it by a political subdivision to the state archivist and retain the other copy

(5) Each state agency shall deposit with the commission two copies of audiovisual materials, and tape or disc recordings issued by it for bibliographic listing and retention in the state library collection Materials not deemed by the commission to be of major public interest will be listed but no copies will be required for deposit 1979

37-5-4. List of state agencies' state publications — Distribution

The commission shall publish a list of each state agency's state publications, which shall provide access by agency, author, title, subject and such other means as the commission may provide The list shall be published periodically and distributed to depository libraries, state agencies, state officers, members of the Legislature and other libraries selected by the commission, with at least an annual cumulation Each state agency shall furnish the commission and the state archivist a complete list of its state publications for the previous year, annually 1979

37-5-5. Designation as depository library.

Upon application, a library in this state may be designated as a complete or selective depository library by the commission 1979

37-5-6. Contract to provide facilities and service — Complete depository libraries — Selective depository libraries.

To be designated as a depository library, a library must contract with the commission to provide adequate facilities for the storage and use of state publications, to render reasonable service without charge to patrons and reasonable access to state publications A complete depository library shall receive at least one copy of all state publications issued by state agencies A selective depository library shall receive those state publications issued by state agencies pertinent to its selection profile and those specifically requested by the library 1979

37-5-7. Micrographics and other copying and transmission techniques

The commission may use micrographics or other copying or transmission techniques to meet the needs of the depository system 1979

37 5 8 Rules and regulations — Standards

The commission may adopt rules and regulations necessary to implement and administer the provisions of this act including standards which must be met by libraries to obtain and retain a designation as a depository library 1979

TITLE 38

LIENS

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1 Mechanics' Liens
2 Miscellaneous Liens
3 Lessors Liens
4 Common Carriers' Liens
5 Judgment Lien — United States Courts
6 Federal Tax Liens
7 Hospital Lien Law
8 Self service Storage Facilities
9 Penalty for Wrongful Lien
10 Oil, Gas and Mining Liens

CHAPTER 1

MECHANICS' LIENS

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38 1 24 Cancellation of record — Penalty

Section
38 1 25 Abuse of lien right — Penalty
38 1 26 Assignment of lien

38 1 1 Public buildings not subject to act

The provisions of this chapter shall not apply to any public building, structure or improvement 1953

38 1 2 "Contractors' and "subcontractors" defined

Whoever shall do work or furnish materials by contract express or implied with the owner as in this chapter provided shall be deemed an original contractor, and all other persons doing work or furnishing materials shall be deemed subcontractors 1953

38 1 3 Those entitled to lien — What may be attached.

Contractors, subcontractors and all persons performing any services or furnishing or renting any materials or equipment used in the construction alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and artisans who have furnished designs, plats, plans maps, specifications drawings, estimates of cost surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent contractor, or otherwise This lien shall attach only to such interest as the owner may have in the property 1987

38-1-4 Amount of land affected — Lots and subdivisions — Franchises, fixtures, and appurtenances

The liens granted by this chapter shall extend to and cover so much of the land whereon such building structure, or improvement shall be made as may be necessary for convenient use and occupation of the land In case any such building shall occupy two or more lots or other subdivisions of land such lots or subdivisions shall be considered as one for the purposes of this chapter The liens provided for in this chapter shall attach to all franchises privileges appurtenances and to all machinery and fixtures pertaining to or used in connection with any such lands buildings, structures, or improvements 1987

38-1 5 Priority — Over other encumbrances

The liens herein provided for shall relate back to, and take effect as of the time of the commencement to do work or furnish materials on the ground for the structure or improvement and shall have priority over any lien, mortgage or other encumbrance which may have attached subsequently to the time when the building, improvement or structure was commenced work begun, or first material furnished on the ground also over any lien, mortgage or other encumbrance of which the lien holder had no notice and which was unrecorded at the time the building structure or improvement was commenced, work begun or first material furnished on the ground 1953

38-1-6 Priority over claims of creditors of original contractor or subcontractor

No attachment garnishment or levy under an execution upon any money due to an original contractor from the owner of any property subject to lien under this chapter shall be valid as against any lien of a subcontractor or material man and no such attachment garnishment or levy upon any money due to a subcontractor or materialman from the contractor shall be valid as against any lien of a laborer employed by the day or piece 1953

38 1 7 Notice of claim — Contents — Recording — Service on owner of property

(1) Every original contractor within 100 days after the completion of his contract and except as provided in this section, every person other than the original contractor who claims the benefit of this chapter within 80 days after furnishing the last material or performing the last labor for or on any land building improvement, or structure shall file for record with the county recorder of the county in which the property or some part of the property is situated a written notice to hold and claim a lien

(2) This notice shall contain a statement setting forth the following information

(a) the name of the reputed owner if known or, if not known the name of the record owner

(b) the name of the person by whom he was employed or to whom he furnished the material,

(c) the time when the first and last labor was performed, or the first and last material was furnished,

(d) a description of the property, sufficient for identification and

(e) the signature of the lien claimant or his authorized agent and the date signed

(3) Within 30 days after filing the notice of lien the lien claimant shall deliver or mail by certified mail to either the reputed owner or record owner of the real property a copy of the notice of lien If the record owner's current address is not readily available, the copy of the claim may be mailed to the last known address of the record owner using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the lien claimant from an award of costs and attorneys fees against the reputed owner or record owner in an action to enforce the lien

(4) When a subcontractor or any person furnishes labor or material as stated in Subsections (1) through (3) at the request of an original contractor then the final date for the filing of a notice of intention to hold and claim a lien for a subcontractor or a person furnishing labor or material at the request of an original contractor is 80 days after completion of the original contract of the original contractor 1987

38-1 8 Liens on several separate properties in one claim

Liens against two or more buildings or other improvements owned by the same person may be included in one claim but in such case the person filing the claim must designate the amount claimed to be due to him on each of such buildings or other improvements 1987

38 1 9 Notice imparted by record

(1) The recorder shall record the claim in an index maintained for that purpose

(2) From the time the claim is filed for record all persons are conclusively presumed to have notice of the claim 1987

38-1-10. Laborers' and materialmen's lien on equal footing regardless of time of filing.

The liens for work and labor done or material furnished as provided in this chapter shall be upon an equal footing, regardless of date of filing the notice and claim of lien and regardless of the time of performing such work and labor or furnishing such material. 1953

38-1-11. Enforcement — Time for — Lis pendens — Action for debt not affected.

Actions to enforce the liens herein provided for must be begun within twelve months after the completion of the original contract, or the suspension of work thereunder for a period of thirty days. Within the twelve months herein mentioned the lien claimant shall file for record with the county recorder of each county in which the lien is recorded a notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action, and the burden of proof shall be upon the lien claimant and those claiming under him to show such actual knowledge. Nothing herein contained shall be construed to impair or affect the right of any person to whom a debt may be due for any work done or materials furnished to maintain a personal action to recover the same. 1953

38-1-12. Repealed. 1981

38-1-13. Parties — Joinder — Intervention.

Lienors not contesting the claims of each other may join as plaintiffs, and when separate actions are commenced the court may consolidate them and make all persons having claims filed parties to the action. Those claiming liens who fail or refuse to become parties plaintiff may be made parties defendant, and any one not made a party may at any time before the final hearing intervene. 1953

38-1-14. Decree — Order of satisfaction.

In every case in which liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

(1) Subcontractors who are laborers or mechanics working by the day or piece, but without furnishing materials therefor;

(2) All other subcontractors and all materialmen;

(3) The original contractors. 1953

38-1-15. Sale — Redemption — Disposition of proceeds.

The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of foreclosure of mortgages, subject to the same right of redemption. If the proceeds of sale after the payment of costs shall not be sufficient to satisfy the whole amount of liens included in the decree, then such proceeds shall be paid in the order above designated, and pro rata to the persons claiming in each class where the sum realized is insufficient to pay the persons of such class in full. Any excess shall be paid to the owner. 1953

38-1-16. Deficiency judgment.

Every person whose claim is not satisfied as herein provided may have judgment docketed for the balance unpaid, and execution therefor against the party personally liable. 1953

38-1-17. Costs — Apportionment — Costs and attorneys' fee to subcontractor.

As between the owner and the contractor the court shall apportion the costs according to the right of the case, but in all cases each subcontractor exhibiting a lien shall have his costs awarded to him, including the costs of preparing and recording the notice of claim of lien and such reasonable attorney's fee as may be incurred in preparing and recording said notice of claim of lien. 1961

38-1-18. Attorneys' fees.

In any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action. 1961

38-1-19. Payment by owner to contractor — Subcontractor's lien not affected.

When any subcontractor shall have actually begun to furnish labor or materials for which he is entitled to a lien no payment to the original contractor shall impair or defeat such lien; and no alteration of any contract shall affect any lien acquired under the provisions of this chapter. 1953

38-1-20. When contract price not payable in cash — Notice.

As to all liens, except that of the contractor, the whole contract price shall be payable in money, except as herein provided, and shall not be diminished by any prior or subsequent indebtedness, offset or counterclaim in favor of the owner and against the contractor, except when the owner has contracted to pay otherwise than in cash, in which case the owner shall post in a conspicuous place on the premises a statement of the terms and conditions of the contract before materials are furnished or labor is performed, which notice must be kept posted, and when so posted shall give notice to all parties interested of the terms and conditions of the contract. Any person willfully tearing down or defacing such notice is guilty of a misdemeanor. 1953

38-1-21. Advance payments — Effect on subcontractor's lien.

No payment made prior to the time when the same is due under the terms and conditions of the contract shall be valid for the purpose of defeating, diminishing or discharging any lien in favor of any person except the contractor; but as to any such lien such payment shall be deemed as if not made, notwithstanding that the contractor to whom it was paid may thereafter abandon his contract or be or become indebted to the owner for damages for nonperformance of his contract or otherwise. 1953

38-1-22. Advance payments under terms of contract — Effect on liens.

The subcontractors' liens provided for in this chapter shall extend to the full contract price, but if at the time of the commencement to do work or furnish materials the owner has paid upon the contract, in accordance with the terms thereof, any portion of the contract price, either in money or property, the lien of the contractor shall extend only to such unpaid balance, and the lien of any subcontractor who has notice of such payment shall be limited to the unpaid balance of the contract price. No part of the contract price shall by the terms of any contract be made payable, nor shall the same or any part thereof be paid in advance of the commencement of the work, for the purpose of evading or defeating the provisions of this chapter. 1953

38-1-23. Creditors cannot reach materials furnished, except for purchase price.

Whenever materials have been furnished for use in the construction, alteration or repair of any building, work or other improvement mentioned in Section 38-1-3 such materials shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, other than a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration or repair of such building or improvement. 1953

38-1-24. Cancellation of record — Penalty.

The claimant of any lien filed as provided herein, on the payment of the amount thereof together with the costs incurred and the fees for cancellation, shall at the request of any person interested in the property charged therewith cause said lien to be canceled of record within ten days from the request, and upon failure to so cancel his lien within the time aforesaid shall forfeit and pay to the person making the request the sum of $20 per day until the same shall be canceled, to be recovered in the same manner as other debts. 1953

38-1-25. Abuse of lien right — Penalty.

Any person who knowingly causes to be filed for record a claim of lien against any property, which contains a greater demand than the sum due him, with the intent to cloud the title, or to exact from the owner or person liable by means of such excessive claim of lien more than is due him, or to procure any advantage or benefit whatever, is guilty of a misdemeanor. 1953

38-1-26. Assignment of lien.

All liens under this chapter shall be assignable as other choses in action, and the assignee may commence and prosecute actions thereon in his own name in the manner herein provided. 1953

CHAPTER 2

MISCELLANEOUS LIENS

Section

38-2-1. Lien on livestock — For feed and care.

Every ranchman, farmer, agistor, herder of cattle, tavern keeper or livery stable keeper to whom any domestic animals shall be entrusted for the purpose of feeding, herding or pasturing shall have a lien upon such animals for the amount that may be due him for such feeding, herding or pasturing, and is authorized to retain possession of such animals until such amount is paid. 1953

38-2-2. Liens of hotels and boardinghouse keepers.

Every innkeeper, hotel keeper, boardinghouse or lodginghouse keeper shall have a lien on the baggage and other property in and about such inn belonging to or under control of his guests or boarders for the proper charges due him for their accommodation, board and lodging, for money paid for or advanced to them, and for such other extras as are furnished at their request. The innkeeper, hotel keeper, boardinghouse or lodginghouse keeper may detain such baggage and other property until the amount of such charge is paid, and the baggage and other property shall not be exempt from attachment or execution until the hotel or boardinghouse keeper's lien and the costs of enforcing it are satisfied. 1953

38-2-3. Repairman's lien on personal property — Lien subject to rights of secured parties.

Every person who shall make, alter or repair, or bestow labor upon, any article of personal property at the request of the owner or other person entitled to possession thereof shall have a lien upon such article for the reasonable value of the labor performed and materials furnished and used in making such article or in altering or repairing the same, and may retain possession thereof until the amount so due is paid; provided such lien and right to possession shall be subject and subordinate to the rights and interests of any secured parties in such personal property unless such secured party has requested such person to make, alter or repair or bestow labor upon such property. 1977

38-2-3.1. Special lien on personal property for services rendered — General lien of dry cleaning establishments, laundries, and shoe repair shops.

Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or owners thereof, by labor or skill performed upon said personal property at the request or order of said owner, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or owners for such service; and every laundry proprietor, person conducting a laundry business, dry cleaning establishment, proprietor and person conducting a dry cleaning establishment, shoe repair establishment proprietor and person conducting a shoe repair establishment has a general lien, dependent on possession, upon all personal property in his hands belonging to a customer, for the balance due him from such customer for laundry work, and for the balance due him for dry cleaning work, and for the balance due him for shoe repair work; but nothing in this section shall be construed to confer a lien in favor of a wholesale dry cleaner on materials received from a dry cleaning establishment proprietor or a person conducting a dry cleaning establishment. The terms "person" and "proprietor" as used in this section shall include an individual, firm, partnership, association, corporation and company. 1953

38-2-3.2. Sale of unclaimed personal property.

(A) Any garments, clothing, shoes, wearing apparel or household goods, remaining in the possession of a person, on which cleaning, pressing, glazing, laundry or washing or repair work has been done or upon which alterations or repairs have been made or on which materials or supplies have been used or furnished by said person holding possession thereof, for

14-1-19. Failure of government entity to obtain payment bond — Right of action — Notice.

If the state or a political subdivision fails to obtain a payment bond it shall, upon demand by a person who has furnished labor or supplied materials to the contractor or subcontractor for the work provided for in a contract which is subject to § 14-1-18, promptly make payment to that person That person shall have a direct right of action against the state or the political subdivision in any court having jurisdiction in any county in which the contract was to be performed, upon giving written notice to the state or political subdivision within 90 days from the date on which such person performed the last of the labor or supplied the last of the material for which claim is made The person shall state in the notice a designation of the construction project and its location, the amount claimed, and the name of the party for whom the labor was performed or to whom the material was supplied The notice shall be served by registered or certified mail, postage prepaid, on the state agency or political subdivision that is a party to the contract No such action may be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by such person

History: C 1953, 14-1-19, enacted by L. 1987, ch 218, § 2.

Applicability. — Laws 1987 ch 218, § 12 provides that Chapter 218 applies only to contracts executed on or after April 27, 1987, and to persons and bonds in connection with such contracts

CHAPTER 2
PRIVATE CONTRACTS

14-2-1. Definitions — Payment bond required — Right of action — Notice.

(1) For purposes of this chapter

(a) "Contractor" means any person who is or may be awarded a contract for the construction, alteration, or repair of any building, structure, or improvement upon land

(b) "Owner" means any person contracting for construction, alteration, or repair of any building, structure, or improvement upon land

(2) Before any contract, exceeding $2,000 in amount, for the construction, alteration, or repair of any building, structure, or improvement upon land is awarded to any contractor, the owner shall obtain from the contractor a payment bond complying with Subsection (3), which shall become binding upon the award of the contract to the contractor

(3) The payment bond shall be with a surety or sureties satisfactory to the owner for the protection of all persons supplying labor and material in the prosecution of the work provided for in the contract in a sum equal to the contract price.

(4) (a) Any person who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under this chapter and who has not been paid in full therefor within 90 days after the day on which the last of the labor was performed by him or material was supplied by him for which the claim is made may sue on the payment bond for any amount unpaid at the time the suit is filed and may prosecute the action for the amount due him Any person having a contract with a subcontractor of the contractor but no express or implied contract with the contractor furnishing the payment bond, has a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which such person performed the last of the labor or supplied the last of the material for which the claim is made The person shall state in the notice the amount claimed and the name of the party for whom the labor was performed or to whom the material was supplied The notice shall be served by registered or certified mail, postage prepaid, on the contractor at any place the contractor maintains an office or conducts business

(b) Any suit instituted under this section shall be brought in the district court of any county in which the contract was to be performed and not elsewhere No such suit may be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person The obligee named in the bond need not be joined as a party in the suit

(5) The payment bond shall be exhibited to any interested person upon request

History C 1953, 14 2 1, enacted by L 1987, ch 218, § 3

Repeals and Reenactments — Laws 1987 ch 218, § 3 repeals former § 14 2 1 as amended by Laws 1985 ch 219 § 1 relating to bond to protect mechanics and materialmen and enacts the present section

Applicability — Laws 1987 ch 218 § 12 provides that Chapter 218 applies only to contracts executed on or after April 27 1987 and to persons and bonds in connection with such contracts

14-2-2. Failure of owner to obtain payment bond — Liability.

Any owner who fails to obtain a payment bond is liable to all persons who have performed labor or have supplied materials under the contract for the reasonable value of the labor performed or materials furnished No action to recover on such liability may be commenced after the expiration of one year after the day on which the last of the labor was performed or the material was supplied by such person

History C 1953, 14 2 2 enacted by L 1987 ch 218, § 4

Repeals and Reenactments — Laws 1987 ch 218 § 4 repeals former § 14 2 2 as amended by Laws 1965 ch 24 § 1 relating to failure to require bond and enacts the present section

Applicability — Laws 1987 ch 218 § 12 provides that Chapter 218 applies only to contracts executed on or after April 27 1987 and to persons and bonds in connection with such contracts

(2) fails to give written notice to the division within 60 days of the retirement, termination, death, cessation of employment, or disassociation with the contractor of the person who, by examination, qualified for the contractor's license or

(3) violates this chapter or the rules of the division or performs or fails to perform any act which is found by a court to injure another 1967

58-50-9 Exemptions from licensure.

The licensing requirements of this chapter do not apply to

(1) any authorized representative of the United States government, or any employee of the state of Utah or any of its political subdivisions when working on construction work of the state or such subdivision and when acting within the terms of their trust or office,

(2) any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts and reclamation districts, or to farming, dairying, agriculture, viticulture, horticulture livestock or poultry raising, metal and coal mining quarries sand and gravel excavations well drilling hauling, and lumbering;

(3) trustees of an express trust or officers of a court if they are acting within the terms of their trust or office respectively,

(4) public utilities operating under the rules of the Public Service Commission on construction work incidental to their own business,

(5) sole owners of property engaged in building structures on their property for their own use,

(6) any person engaged in the sale or merchandising of personal property which by its design or manufacture may be attached, installed, or otherwise affixed to real property who has contracted with a person, firm, or corporation licensed under this chapter to install, affix, or attach that property

(7) any contractor submitting a bid on a federal aid highway project if, before undertaking any construction under that bid, the contractor is licensed under this chapter;

(8) any person who engages in the alteration, repair, remodeling, or addition to or improvement of any building with a contracted or agreed value, including both labor and materials, of less than $1 000, including all changes or additions to the contracted or agreed work, or

(9) any person practicing a specialty contracting trade classified by rule by the director as not significantly impacting the public's health, safety, and welfare 1967

58-50-10. Payment — Account designated.

Any contractor in making any payment to a materialman, contractor or subcontractor with whom he has a running account, or with whom he has more than one contract, or to whom he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied. When a payment for materials or labor is made to a subcontractor or materialman, the subcontractor or materialman shall demand of the person making the payment a designation of the account and the items of account to which the payment is to apply In any case where a lien is claimed for materials furnished or labor performed by a subcontractor or materialman, it is a defense to the claim that a payment made by the owner to the contractor for the materials has been so designated, and paid over to the subcontractor or materialman and that when the payment was received by the subcontractor or materialman, he did not demand a designation of the account and of the items of account to which the payment was to be applied 1967

58-50-11. Proof of licensure to maintain or commence action.

No contractor may act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose 1967

58-50-12. Requirements when working for political subdivision or state agency.

Each political subdivision of the state each board of education, and each agency of the state which requires the issuance of a permit or license as a precondition to the construction, alteration, improvement, demolition, or other repairs for which a contractor's license is also required under this chapter shall

(1) require that each applicant for a permit or license file a signed statement that the applicant has a current contractor's license with the license number included in the application

(2) require that any representation of exemption from the contractor's licensing law be included in the signed statement and that if that exempt person, firm, corporation, association, or other form of organization intends to hire a contractor to perform any work under the permit or license that the license number of that contractor be included in the application but if a contractor has not been selected at the time of the application for a permit or license, the permit or license shall be issued only on the condition that a currently licensed contractor will be selected and that the license number of the contractor will be given to the issuing public body and displayed on the permit or license and

(3) upon issuance of a permit or license affix the contractor's license number to that permit or license for public display 1967

58-50-13. Payment of construction funds — Interest.

(1) Except for single family residences and as otherwise may be agreed to in writing between the parties, all unpaid construction funds are payable to the contractor within 30 days after

(a) occupancy by the owner or by a party acting through authority of the owner; or

(b) the availability of a constructed or remodeled building for its intended use

(2) Construction funds, except those withheld on account of disputed or uncompleted items by the owner or the owner's representative, not paid within the time established in Subsection (1) shall accrue interest at the rate of 1-½% per month. The owner may withhold payment for the amount of any disputed or uncompleted items and may require, as a condition precedent to payment of any amounts under the construction contract, that lien waivers be furnished by the contractor's subcontractors, suppliers, or employees The owner may also at owner's option issue joint checks No payment may be withheld unless the contractor is notified, in writing, at the time of withholding the payment as to any disputed item

(3) On projects involving multiple buildings each building shall be considered individually in determining the amount to be paid the contractor

(4) Partial occupancy of a building requires payment in direct proportion to the value of the part of the building occupied

(5) Any money paid the contractor under Subsection (1) including interest shall be disbursed to subcontractors and suppliers within 30 days after receipt of that money Payment by the contractor shall be in direct proportion to the subcontractors and suppliers basis in the total contract between the contractor and the owner 1967

58-50-14. Payment to subcontractors and suppliers.

(1) When a contractor receives any construction funds from an owner or another contractor for work performed and billed, he shall pay each of his subcontractors and suppliers in proportion to the percentage of the work they performed under that billing, unless other contractual terms are set forth

(2) If the contractor fails, under this section and without reasonable cause, or unless otherwise contracted, to pay for work performed by his subcontractors or suppliers (a) within 30 consecutive days after the receipt of construction funds from the owner or another contractor for work performed and billed or (b) after the last day payment is due under the terms of the billing, whichever is later, he shall pay to the subcontractor or supplier, in addition to the payment, interest in the amount of 18 0% per year of the amount due, beginning on the day after payment is due under (a) or (b), as the case may be, and reasonable costs of collection and attorneys fees incurred, if collection is necessary

(3) When a subcontractor receives any construction payment under this section, Subsections (1) and (2) apply to that subcontractor 1967

58-50-15. Applicability of Chapter 1, Title 58.

The general provisions of Chapter 1, Title 58 including the prohibitions and penalties thereof shall be applicable to the administration and enforcement of this chapter insofar as they are not in conflict with this chapter 1967

58-50-16. Violations — Misdemeanors.

Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor 1967

58-50-17. Uniform Building Code adopted.

The Uniform Building Code promulgated by the International Conference of Building Officials is adopted as the construction standard to which each political subdivision of this state shall adhere in the regulation of all building construction, alteration repair, and other activities of a contractor The division with the concurrence of the board may adopt amendments to the Uniform Building Code or adopt a successor edition of the Uniform Building Code by rule in accordance with Section 58-50-19 1967

58-50-18. Definitions — Board duties — Interpretation and application of Uniform Building Code — Local regulators

(1) As used in this section

(a) Board" or state board" means the Contractors Board

(b) Building code' means the Uniform Building Code adopted under Section 58-50-17

(c) Division means the Division of Occupational and Professional Licensing

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THIRD DISTRICT COURT OF UTAH
SALT LAKE COUNTY

ASSOCIATED ELECTRIC SUPPLY, INC., a Utah corporation, Plaintiff,	*	Civil No. C87-1757
vs.	*	FINDINGS OF FACT AND CONCLUSIONS OF LAW
SHIRL B. INKLEY, etc., et al., Defendants.	*	Judge Frederick

The court trial of the above entitled matter having come on regularly for hearing on June 15, 1989, before the above entitled court, the Honorable J. Dennis Frederick, Judge, presiding, and the Court having received both oral and documentary evidence, and the defendants have made a motion for a directed verdict at the conclusion of the plaintiff's case, and the Court having heard counsels' arguments for and against said motion, and the Court having taken the motion under consideration now makes the following findings of fact and conclusions of law viewing the evidence most favorable for the plaintiff:

FINDINGS OF FACT

1. That the plaintiff is a supplier of electrical materials;

2. That the plaintiff sold electrical materials on account to an electrical sub-contractor known as Old Trapper Electric;

3. That prior to August 1, 1985, the purchases and payments of Old Trapper were recorded by the plaintiff on separate ledger accounts corresponding to the different projects of Old Trapper;

4. That prior to August 1, 1985, the plaintiff maintained a separate ledger account for the Old Trapper purchases and payments designated for the Hunter project;

5. That after August 1, 1985, the plaintiff consolidated the Hunter ledger into the Old Trapper general ledger, and, thereafter, the purchases and payments for the several projects of Old Trapper were recorded on the general ledger;

6. That the plans and specifications of the Hunter project described the kinds and quantities of materials sold to Old Trapper on invoices which were designated for the Hunter project;

7. That the plaintiff did not introduce evidence regarding the content or recording of its Notice of Lien, or that it had otherwise complied with the provisions of U.C.A. 38-1-2 et seq.;

8. That the plaintiff did not introduce evidence that it had satisfied the requirements of U.C.A. 58-50-10, or its predecessor U.C.A. 58A-1a-12, in demanding a designation of the account and the items of account to which payments by Old Trapper were to have been made;

9. That the plaintiff did not introduce evidence of the defendant's bond, the content thereof, or that the plaintiff had otherwise complied with the provisions of U.C.A. 14-2-1 et seq.;

10. Finally, that the plaintiff did not introduce evidence of the defendants' unjust enrichment.

CONCLUSIONS OF LAW

Pursuant to Rule 50, Utah Rules of Civil Procedure, the Court, viewing the evidence most favorable to the plaintiff, makes the following conclusions of law:

1. In order for the plaintiff to prevail on its cause of actions for foreclosure of its lien and on its claim against the payment bond, it must have complied with the provisions of U.C.A. 58-50-10, or its predecessor 58A-1a-12. Western Ready Mix Concrete Company v. Richard Rodriguez etal., 567 P.2d 1118 (Utah 1977). The Court concludes that the plaintiff did not comply with the provsions of the statute;

2. The Court concludes that the evidence presented by the plaintiff is insufficient to sustain its First Cause of Action, Lien Foreclosure;

3. The Court concludes that the evidence presented by the plaintiff is insufficient to sustain its Second Cause of Action, Quantum Meruit;

4. The Court concludes that the evidence presented by the plaintiff is insufficient to sustain its Third Cause of Action, Payment Bond; and

5. In view of the findings and conclusions, the defendants are entitled to their reasonable costs and attorney's fees in connection herewith.

Dated: _____, 1989.

_____
District Court Judge

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that the foregoing was mailed to the interested parties on the date below, addressed as follows:

Ms. Lora Siegler, Attorney for Plaintiff, 1399 South 700 East, Suite 12, Salt Lake City, Utah 84105.

Dated: _____, 1989.

_____